

THE EMPLOYEE'S GUIDE TO RIF

Developed by:

U.S. OFFICE OF PERSONNEL MANAGEMENT:
WORKFORCE RESTRUCTURING OFFICE
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The Office of Personnel Management (OPM) created the Workforce Restructuring Office in March 1994, in response to Administration and Congressional downsizing initiatives. The Office provides assistance to agency personnelists and Federal employees on all aspects of downsizing. These areas include, but are not limited to:

- * early retirements
- * buyouts
- * alternatives to RIF
- * reorganization and delayering tools and strategies
- * reductions in force and furlough procedures
- * grade and pay retention, and severance pay
- * unemployment compensation
- * retraining programs
- * inplacement and outplacement programs
- * on-site technical assistance

The telephone number for the Workforce Restructuring Office is (202) 606-0960. The fax number is (202) 606-2329. To request information, please leave your name, address, and the information requested on (202) 606-2425. Additional information on downsizing may also be obtained from two OPM computer bulletin boards. OPM Mainstreet may be reached on (202) 606-4800; for the Federal Job Opportunity Board, the number is (912) 757-3100.

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REDUCTION IN FORCE

One of the most difficult situations in any worker's life is the prospect of being laid off from his or her job. When a productive member of society loses his or her job, the stress of facing the unknown can be agonizing.

In the Federal Government, layoffs are called reductions in force, or RIFs. While the word "RIF" certainly has negative connotations, it also has another side -- as an objective system which determines how employees compete for retention when employment reductions are necessary.

It is important to try and understand how the RIF process works. That is the purpose of this Guide. We do not expect everyone to become an expert overnight; becoming informed of why a RIF is happening and how the process works can be a help for those staying in the organization, and for those leaving. It may also be the beginning of acceptance of the situation, and the impetus to transition to a new career.

BACKGROUND

OPM's reduction in force (RIF) regulations are derived from the Veterans' Preference Act of 1944 and are presently codified in Sections 3501-3503 of Title 5, United States Code. The law provides that OPM's RIF regulations must give effect to four factors in releasing employees--(1) tenure of employment (e.g., type of appointment); (2) veterans' preference; (3) length of service; and (4) performance ratings. OPM implements the laws through regulations published in Part 351 of Title 5, Code of Federal Regulations, and the Workforce Restructuring Handbook, to be published in 1995. These regulations are also impacted by legal decisions of the Merit Systems Protection Board (MSPB) and the courts.

WHEN TO USE RIF PROCEDURES

An agency must use RIF procedures when an employee is faced with separation or downgrading for a reason such as reorganization, lack of work, shortage of funds, insufficient personnel ceiling, or the exercise of certain reemployment or restoration rights. A

furlough of more than 30 calendar days, or of more than 22 discontinuous days, is also a RIF action. (A furlough of 30 or fewer calendar days, or of 22 or fewer discontinuous work days, is an adverse action.) RIF procedures may not be used to take performance- or conduct-based actions.

RIF ALTERNATIVES

RIF is the last stop on the road to downsizing. Because it has adverse affect on employees and productivity, it is the last option an agency should pursue when reorganizing or dealing with budget cuts. Other options, including hiring freezes, early retirement, buyouts, and directed reassignments, should be tried before an agency resorts to RIF.

MANAGEMENT RESPONSIBILITY

Agency management has the responsibility to make decisions concerning a RIF. Management decides if a RIF is necessary, when it will take place, and what positions will be abolished. Unions play a major role in the downsizing process, and frequently negotiate various aspects of reduction in force.

APPLYING THE RIF REGULATIONS

COMPETITIVE AREA-Before a RIF begins, the agency defines the competitive area. The competitive area is the geographical and organizational boundaries within which employees compete for retention. A competitive area may consist of all or part of an agency. The minimum competitive area is a bureau, major command, directorate, or other equivalent major subdivision of an agency within a local commuting area. If an agency wants to change a competitive area within 90 days of a RIF, the agency must obtain approval from OPM.

COMPETITIVE LEVEL-Next, the agency groups similar positions into competitive levels based on grade, series, qualifications, duties, and working conditions. Positions with different types of work schedules (e.g., full-time, part-time, intermittent, seasonal, or on-call) are placed in different competitive levels.

A typical competitive level would group all GS-201-11 personnel management specialists with interchangeable duties based on their position descriptions in the same competitive level. Finally, competitive and excepted service positions are placed in separate competitive levels.

RETENTION REGISTERS--Then, the four retention factors are applied and the competitive level becomes a retention register, listing employees in the order of their retention standing.

1. **TENURE.** Employees are ranked on a retention register in three groups according to their types of appointment:

Group I - Career employees who are not serving on probation. (A new supervisor or manager who is serving a probationary period that is required on initial appointment to that type of position is not considered to be serving on probation if the employee previously completed a probationary period.)

Group II - Career employees who are serving a probationary period, and career-conditional employees.

Group III - Employees serving under term and similar non-status appointments. (An employee serving under a temporary appointment in the competitive service is not a competing employee for RIF purposes and is not listed on the retention register.)

2. **VETERANS' PREFERENCE** Each tenure group is divided into three subgroups reflecting the employees' entitlement to veterans' preference:

Subgroup AD - Veterans with a compensable service-connected disability of 30% or more.

Subgroup A - Veterans not included in subgroup AD.

Subgroup B - Nonveterans.

Military service does not entitle employees to veterans' preference. Veterans' preference is awarded to those individuals who served:

1. During the period December 7, 1941, to July 1, 1955; or
2. For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976; or
3. In a campaign or expedition for which a campaign medal has been authorized.

* Medal holders who enlisted after September 7, 1981, must have served continuously for 24 months or the full period called or ordered to active duty. This is not applicable to those veterans with compensable disabilities, or veterans separated for disability in the line of duty, or for hardship.

* Medal holders who entered on active duty on or after October 14, 1982, must have served continuously for 24 months or the full period called or ordered to active duty. This is not applicable to those veterans with compensable disabilities, or veterans separated for disability in the line of duty, or for hardship.

Veterans' preference may also be awarded to:

1. An unmarried spouse of certain deceased veterans;
2. A spouse of a veteran unable to work because of a service-connected disability; or
3. A mother of a veteran who died in service or who is permanently and totally disabled.

In order to receive veterans' preference, an honorable or general discharge is necessary. Military retirees at the rank of major, lieutenant commander, or higher are NOT eligible for veterans' preference unless they are disabled veterans. Guard or Reserve active duty for training purposes does NOT qualify for veterans' preference.

Any questions concerning veterans' preference eligibility should be addressed to the servicing personnel office of the employee in question.

NOTE FOR MILITARY RETIREES:

A retired member of the armed forces is considered to be a veteran for RIF purposes only if the veteran meets one of the following: (i) The armed forces retired pay is directly based upon a combat-incurred disability or injury; (ii) The armed forces retirement is based upon less than 20 years of active service; or (iii) The employee has been working for the Government since November 30, 1964 without a break in service of more than 30 days. (If the veteran meets condition (iii) but retired at the rank of major or higher (or equivalent), he or she must also meet the general definition of disabled veteran in Section 2108(2) of Title 5, United States Code, in order to be a veteran for RIF purposes.)

An employee's tenure group with the addition of veterans'

preference constitutes the employee's TENURE SUBGROUP.

3. **LENGTH OF SERVICE** Within each tenure subgroup, employees are ranked by service dates. Employees with more creditable service are ranked ahead of those with less service in each subgroup. The service dates include creditable civilian and military service, and additional service credit for certain performance ratings.

4. **PERFORMANCE.** Employees receive extra RIF service credit for performance based on the average of their last three ratings of record received during the 4-year period prior to the date the agency issues RIF notices. The 4-year period begins on the date the agency issues RIF notices, or the date the agency freezes ratings before issuing RIF notices, if earlier.

The ratings are: "O" is Outstanding; "EFS" is Exceeds Fully Successful; "FS" is Fully Successful; "MS" is Minimally Successful; and "U" is Unacceptable. Employees receive extra credit only for ratings of FS or above. The value of each performance appraisal is:

- * 20 years for an "Outstanding" rating;
- * 16 years for an "Exceeds Fully Successful" rating;
- * 12 years for a "Fully Successful" rating.

An employee receives additional service credit based on the average (rounded up in the case of a fraction to the next whole number) of the value of the employee's last three annual ratings.

If an employee received more than three annual ratings during the 4-year period, the three most recent annual ratings are used. If an employee received less than three annual ratings during the 4-year period, credit is given for an assumed rating of "Fully Successful" for any missing appraisals to bring the number of ratings up to three, regardless of the employee's actual length of service.

For example, an employee with two years of Federal service, or has only 2 annual ratings, has one annual rating of "Outstanding" (20) and one of "Exceeds Fully Successful" (16). The employee would receive additional RIF service credit based upon the two actual ratings plus one assumed rating of "Fully Successful" (12), or $20+16+12 = 48$, divided by 3 = 16 years of RIF credit for performance.

(Putting people in retention order is commonly referred to in personnel as "running a register." Many agencies run registers from computer programs specifically designed for reduction in force. The most common programs are RIF Runner, WIZARD, and RADS (Rightsizing And Documentation System). These programs were created by the Department of Defense, but are used by many civilian agencies as well.)

5. **RELEASE.** Agencies determine how many positions in a given series and grade they need to cut and release employees. Employees are released from the retention register in the inverse order of their retention standing. (For example, the employee with the lowest standing is the individual who is actually released for RIF action.) Employees in Group III are released before employees in Group II, and employees in Group II are released before employees in Group I. Within tenure subgroups, employees in Subgroup B are released before employees in Subgroup A, and employees in Subgroup A are released before employees in Subgroup AD. Any employee reached for release out of this regular order must be notified of the reasons.

RIGHTS TO OTHER POSITIONS: Bumping and Retreating

After employees are released from their retention register, they may have rights to other positions by exercising bumping and retreating rights.

"BUMPING" means displacing an employee in the same competitive area who is in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. Although the released employee must be qualified for the position, it may be a position that he or she has never held. The position must be at the same grade, or within three grades or grade-intervals, of the employee's present position.

"RETREATING" means displacing an employee in the same competitive area who has less service within the released employee's own tenure group and subgroup. The position must be at the same grade, or within three grades or grade-intervals, of the employee's present position. However, an employee in retention subgroup AD has expanded retreat rights to positions up to five grades or grade-intervals lower than the position held by the released employee. The position into which the employee is retreating must also be the same position

(or an essentially identical position) previously held by the released employee in any Federal agency on a permanent basis.

Employees in Groups I and II with current performance ratings of at least "Minimally Successful" are entitled to an offer of assignment if they have "bumping" or "retreating" rights to an available position in the same competitive area. An "available" position must: (i) last at least 3 months; (ii) be in the competitive service; (iii) be one the released employee qualifies for; or (iv) be within three grades (or grade-intervals) of the employee's present position.

Employees in Groups I and II with current performance ratings of "Unsuccessful," and all employees in Group III, have no assignment rights to other positions. Employees holding excepted service positions have no assignment rights unless their agency, at its discretion, chooses to offer these rights.

An employee with a current annual performance rating of "Minimally Successful" only has retreat rights to positions held by employees with the same or lower ratings. The grade limits of an employee's assignment rights are determined by the grade progression of the position from which the employee is released. The difference between successive grades in a one-grade occupation is a grade difference, and the difference between successful grades in a multi-grade occupations is a grade-interval difference. The grade limits are based upon the position the employee holds at the time of the RIF.

For example, an employee released from a GS-11 position that progresses GS-5-7-9-11 has bump and retreat rights to positions from GS-11 through GS-5. An employee released from a GS-9 position that progresses GS-6-7-8-9 has bump and retreat rights to positions from GS-9 through GS-6.

VACANT POSITIONS

An agency is not required to offer vacant positions in a RIF, but may choose to fill all, some, or none of them. When an agency chooses to fill a vacancy with an employee reached for RIF action, subgroup retention standing is followed. A RIF offer of assignment to a vacant position can only be in the same competitive area, and must be within three grades (or grade-intervals) of the employee's present position. At its discretion, the agency may offer employees reassignment, or voluntary change to a lower-graded position, in the same or other

competitive areas in lieu of RIF.

RIF NOTICES

An agency must give each employee at least 60 days specific written notice before he or she is reached for RIF action. In a Department of Defense RIF in which 50 or more employees receive separation notices, the agency must give the employee a minimum of 120 days specific written notice. In exceptional circumstances, an agency may, with prior OPM approval, give employees less than 60, but not less than 30 days specific written notice of a RIF action.

RIF APPEALS AND GRIEVANCES

RIGHT TO APPEAL. An employee who has been separated, downgraded or furloughed for more than 30 days by RIF, has the right to appeal to the Merit Systems Protection Board (MSPB) if he or she believes the agency did not properly follow the RIF regulations. The appeal must be filed during the 30-day period beginning the day after the effective date of the RIF action.

If MSPB rules in favor of the employee, the agency must restore the employee to the separated position or assign the employee to the appropriate position. The agency can be required to give backpay to the affected employee.

RIGHT TO GRIEVE. An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF must use the negotiated grievance procedure and may not appeal the RIF action to MSPB unless the employee alleges the action was based upon discrimination. The time limits for filing a grievance are set forth in the collective bargaining agreement.

If an employees feels he or she has been discriminated against during a RIF, the employee should contact the agency EEO counselor for information on available options.

TIPS FOR EMPLOYEES

Because of fundamental changes in an employee's life that RIF presents, and because employees may not have large amounts of time to make decisions concerning RIF, employees should take steps NOW to be prepared for any RIF that may occur. The following steps are recommended:

- * Review your official personnel (OPF) file to ensure that all periods of Federal service are documented.

Having all of this documented is critical because all computations concerning severance pay, voluntary early retirement, and buyouts will be computed based on this information.

- * Review your position description (PD) to ensure it reflects actual duties performed. Your PD is very important in a RIF. Your rights and benefits as an employee in a RIF flow from the PD of record.

- * Obtain any missing performance ratings of record from the last 4 years.

As described earlier in this Guide, employees receive RIF service credit for performance based on the average of the last three ratings of record during the 4-year period prior to the date the agency issues RIF notices. It is important to obtain any missing performance appraisals from the prior 4 years in order to receive the full credit you are due in a RIF. Any missing rating is considered "Fully Successful."

- * If you served in the Armed Forces, check your official personnel folder to ensure it contains a copy of your last DD-214.

The discharge papers from the armed forces is called the DD-214. For entitlement to veterans' preference in a RIF, your servicing personnel office uses the latest dated copy of the DD-214. Check with them to make sure they have a copy.

- * Obtain an estimate of your annuity from your retirement counselor.

If you are considering retirement at any time, your servicing personnel office has retirement counselors available to assist you. They can give you an estimate of your annuity and explain your benefits to you. Be careful to determine what impact retirement or separation will have on your insurance coverage. Carefully consider whether you can live on a reduced income.

- * Discuss your available options concerning the Thrift Savings

Plan (TSP).

Substantial taxes and penalties are involved if you handle your TSP contributions incorrectly. Contact your TSP advisor or retirement counselor for information on your options.

* If you served in the military after 1956, send for your pay records.

It is probably in your best interest to pay a retirement contribution to cover any post-1956 military service. You must do this before you retire. Start the process by requesting your military pay records from the military finance center for your branch of service. Your personnel office can tell you where to apply. Begin the process immediately -- it is not unusual for the processing of these changes to take as much as 8 weeks.

* Discuss future plans with your spouse and family.

RIF or any change in employment status represents a major change in your way of life. Your spouse and family should be involved in this life-changing event. Job separation may mean pursuing the career you always wanted, but could not. It may mean going back to school, looking for work closer to family, or adjusting the standard of living for the entire family. In any event, discussing the possibility of job loss with your spouse and family can help make decisions easier if a RIF occurs.

* Consider meeting with a personal financial advisor.

A financial advisor can review your current money situation, and help make plans in the event you are separated due to a RIF. The advisor can help you figure out what tax advantages may be open to you, make projections on future income, review current and future debts, and what standard of living you can expect.

Immediate planning and thorough preparation NOW can help you to make decisions in a RIF occurs.

For more information on benefits and reemployment programs, please refer to "The Employee's Guide to Separation Benefits," a publication of the U.S. Office of Personnel Management's Workforce Restructuring Office.